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**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

In the Matter of the Informal	*	Petition - Request for Formal
Conference for the Fact of Violation and	*	Hearing before the Board
Proposed Assessment for Citation No.	*	(Request for Agency Action)
MC-2013-17-03, C.E. Butters Realty and	*	
Construction	*	Docket No.
	*	
	*	Cause No.

Pursuant to Utah Code Ann. § 40-10-22(3)(a), and Utah Admin. Code §§ R645-401-800 and R641-104-133, Petitioner requests a formal hearing before the Board of Oil, Gas, and Mining concerning the Decision and Order entered on November 15, 2013. Petitioner appeals the factual determinations (Findings of Fact), the Conclusions of Law, the application of the law to the facts and ultimate determination of points in the final assessment of the penalty and Order.

The Decision and Order fails to give proper weight and consideration to the Petitioner's reasonable reliance on the Division's website and "Primer" (which has been subsequently removed from the Division's website) as well as past custom and practices

relating to construction of infrastructure and roadways as not involving a "mining operation." (*Equitable Estoppel*)

Petitioner is appealing the Decision and Order, because it believes this matter presents a fairly significant deviation from the Division's past practices, which basic principals of fairness and due process dictate should be applied prospectively, with reasonable notice to the public and the construction industry, and not on an ad hoc basis. For example in the construction of a state roadway if a contractor performs significant cut, with or without blasting (as was required in several places when LeGrand Johnson Construction Company improved Highway 89/91 from Brigham City to Logan) and not only incorporates the material into the improved roadbed, but also moves other materials offsite, does this constitute a "mining process"? Is the fact that it involved a UDOT road project create an exemption from DOGAM enforcement? The implications of Director Baza's decision impacts substantially the bidding process for construction and excavation projects, and a uniform and consistent application of the law to similar projects is needed so each contractor or aggregate material provider will know the legal and administrative requirements with a greater degree of certainty, but most important, will not be placed at a competitive disadvantage.

In addition to the interpretation of the law, the enforcement, also needs to be uniform and equitable.

The \$264 civil penalty accompanies this Petition.

Respectfully submitted this 13th day of December, 2013.

HARRIS, PRESTON & CHAMBERS, LLP

/s/ Jos M. Chambers

Joseph M. Chambers
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Petition – Request for Formal Hearing before the Board (Request for Agency Action) to be mailed by email, First Class or Certified Mail with postage prepaid (as respectively noted in the bracketed notation below), this 13th day of December, 2013, to the following:

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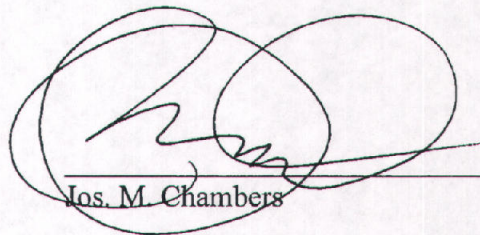
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